

1 KEITH E. EGGLETON, State Bar No. 159842
2 RODNEY G. STRICKLAND, State Bar No. 161934
3 JONI OSTLER, State Bar No. 230009
4 FREEDA Y. LUGO, State Bar No. 244913
5 WILSON SONSINI GOODRICH & ROSATI
6 Professional Corporation
7 650 Page Mill Road
8 Palo Alto, CA 94304-1050
9 Telephone: (650) 493-9300
10 Facsimile: (650) 565-5100
11 E-mail: keggleton@wsgr.com
12 E-mail: rstrickland@wsgr.com
13 E-mail: jostler@wsgr.com
14 E-mail: flugo@wsgr.com

15 Attorneys for Defendants BigBand Networks,
16 Inc., Amir Bassan-Eskanazi, Ran Oz, Frederick A.
17 Ball, Gal Israely, Dean Gilbert, Kenneth E.
18 Goldman, Lloyd Carney, Bruce I. Sachs, Robert J.
19 Sachs, and Geoffrey Y. Yang

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 OAKLAND DIVISION

23 BIKASH MOHAN MOHANTY, On Behalf of)
24 Himself and All Others Similarly Situated,)

25 Plaintiff,)

26 v.)

27 BIGBAND NETWORKS, INC., AMIR)
28 BASSAN-ESKENAZI, RAN OZ, FREDERICK)
29 BALL, GAL ISRAELY, DEAN GILBERT,)
30 KEN GOLDMAN, LLOYD CARNEY, BRUCE)
31 SACHS, ROBERT SACHS, GEOFFREY)
32 YANG, MORGAN STANLEY & CO., INC.,)
33 MERRILL LYNCH, PIERCE, FENNER &)
34 SMITH, INC., JEFFERIES & CO., INC.,)
35 COWEN AND CO., INC., AND)
36 THINKEQUITY PARTNERS LLC,)

37 Defendants.)

CASE NO.: 4:07-CV-05101-SBA

**DEFENDANTS' STATEMENT
REGARDING CASE
MANAGEMENT CONFERENCE**

Date: February 5, 2008

Time: 1:00 p.m.

Place: Courtroom 3, 3rd Floor

Before: Hon. Sandra B. Armstrong

Defendants BigBand Networks, Inc., Amir Bassan-Eskenazi, Frederick Ball, Ran Oz, Lloyd Carney, Dean Gilbert, Kenneth Goldman, Gal Israely, Bruce Sachs, Robert Sachs and Geoffrey Yang (collectively, the “BigBand Defendants”), and Morgan Stanley & Co. Incorporated, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Jefferies & Company, Inc., Cowen and Company, LLC, and ThinkEquity Partners LLC (collectively with the BigBand Defendants, “Defendants”), respectfully submit this Statement Regarding Case Management Conference, in lieu of a Joint Case Management Statement, in connection with the Case Management Conference scheduled for February 5, 2008.

PROCEDURAL BACKGROUND

This is the first of eight securities class action lawsuits that were filed against BigBand Networks, Inc., certain of its present and former officers and directors, and the underwriters of its initial public offering. The following other substantially similar class actions are also pending in the Northern District of California:

Koesterer v. BigBand Networks, Inc., et al., No. C 07-5168-MMC, filed 10/09/07;

Winston v. BigBand Networks, Inc., et al., No. C 07-5327-MMC, filed 10/18/07;

Smith v. BigBand Networks, Inc., et al., No. C 07-5361-SI, filed 10/19/07;

Luzon v. BigBand Networks, Inc., et al., No. C 07-5637-WHA, filed 11/6/07;

Bernstein v. BigBand Networks, Inc., et al., No. C 07-05819-CRB, filed 11/15/07;

Hammer v. BigBand Networks, Inc., et al., No. C 07-5825-SI, filed 11/16/07; and

Wiltjer v. BigBand Networks, Inc., et al., No. C 08-22-CRB, removed on 1/2/08.

On November 21, 2007, all parties (with the exception of the plaintiff in the *Wiltjer* matter, which had not yet been filed) signed a Stipulation and [Proposed] Order Regarding Consolidation and Scheduling (Docket No. 11), in which they agreed that the cases should be consolidated, and that Defendants are not obligated to respond to any of the pending complaints until this Court appoints a lead plaintiff and a consolidated complaint is filed by the appointed lead plaintiff.

On December 3, 2007, two motions to consolidate the above-referenced actions and for appointment as Lead Plaintiff were filed pursuant to the lead plaintiff provisions of the Private

1 Securities Litigation Reform Act (“Reform Act”). *See* Docket Nos. 12, 15. The motions have
 2 now been fully briefed and are scheduled to be heard on February 5, 2008.

3 Also on December 3, 2007, another federal securities class action titled *Wiltjer v.*
 4 *BigBand Networks, Inc., et al.*, was filed in the Superior Court for the State of California, County
 5 of San Francisco, against the Defendants. The *Wiltjer* case asserts only federal claims for
 6 violations of the Securities Act of 1933.

7 On January 2, 2008, Defendants jointly removed the *Wiltjer* action. On January 3, 2008,
 8 the BigBand Defendants filed a Motion for Administrative Relief to Consider Whether Cases
 9 Should Be Related to relate the *Wiltjer* case to this first-filed action. *See* Docket No. 24. The
 10 *Wiltjer* plaintiff filed a Motion to Remand on January 18, 2008. That motion is currently set for
 11 hearing before the Honorable Charles R. Breyer on February 22, 2008 at 10:00 a.m.¹

12 **DEFENDANTS’ CASE MANAGEMENT STATEMENT**

13 Given that the eight cases have not yet been consolidated, the lead plaintiff and lead
 14 plaintiff counsel have not yet been selected, and no consolidated complaint has been filed, the
 15 Defendants respectfully submit that a Case Management Statement, a Case Management
 16 Conference and a Case Management Order in the purported class action is premature at this time.
 17 Nonetheless, the Defendants submit the following:

18 1. Jurisdiction and Service.

19 Service or waivers of service have been effectuated as to all defendants in this case. At
 20 this time, there are no factual issues as to personal jurisdiction that remain unresolved. As
 21 mentioned above, the plaintiff in the *Wiltjer* matter has filed a motion to remand that case to the
 22 Superior Court for the State of California, County of San Francisco.

23 2. Facts. The current complaints allege that the Defendants violated Sections 11,
 24 12(a)(2) and 15 of the Securities Act of 1933 and/or Sections 10(b) and 20(a) of the Securities
 25 Exchange Act of 1934 by selling or assisting in the sale of securities pursuant to a false and
 26

27 ¹ The pending motion will be heard by this Court if the *Wiltjer* case is related to and/or
 28 consolidated with this action, as the parties have requested.

1 misleading registration statement and prospectus in connection with BigBand's initial public
2 offering, and/or by making false or misleading statements or omissions to investors after the
3 initial public offering.

4 3. Motions. There are currently two pending motions for appointment as lead
5 plaintiff and lead counsel. The BigBand Defendants' Motion for Administrative Relief to relate
6 the *Wiltjer* case is pending. The plaintiff's motion to remand is pending in the *Wiltjer* matter
7 before Judge Breyer. The Defendants also anticipate that they will file a motion to dismiss the
8 consolidated amended complaint once that complaint is filed by a court-appointed lead plaintiff.

9 4. Amendment of Pleadings. The Defendants anticipate that the appointed lead
10 plaintiff will file a consolidated complaint.

11 5. Evidence Preservation. The Defendants have taken reasonable steps to preserve
12 evidence relevant to the issues reasonably evident in this action.

13 6. Disclosures & Discovery. The discovery stay provisions of the Private Securities
14 Litigation Reform Act are applicable here. Thus, all discovery is stayed pending a determination
15 of the sufficiency of the complaint. Once a consolidated complaint is filed, the Defendants
16 intend to challenge the sufficiency of the allegations.

17 7. Related Cases. As discussed above, there are seven other substantially similar
18 purported class actions proceeding in the Northern District of California. Pursuant to the
19 Stipulation and [Proposed] Order Regarding Consolidation and Scheduling (Docket No. 11), the
20 parties all stipulated and agreed that this case and the following additional cases should all be
21 deemed related and consolidated: *Koesterer v. BigBand Networks, Inc., et al.*, No. C 07-5168-
22 MMC; *Winston v. BigBand Networks, Inc., et al.*, No. C 07-5327-MMC; *Smith v. BigBand*
23 *Networks, Inc., et al.*, No. C 07-5361-SI; *Luzon v. BigBand Networks, Inc., et al.*, No. C 07-
24 5637-WHA; *Bernstein v. BigBand Networks, Inc., et al.*, No. C 07-05819-CRB; and *Hammer v.*
25 *BigBand Networks, Inc., et al.*, No. C 07-5825-SI. In addition, *Wiltjer v. BigBand Networks,*
26 *Inc., et al.*, No. C 08-22-CRB, should be deemed related to this action and consolidated with the
27 others. See Docket No. 24.

1 The pending lead plaintiff motions also request consolidation of these actions. The
2 BigBand Defendants have joined in those requests. *See* BigBand Defendants' Response to
3 Motions for Consolidation, Appointment as Lead Plaintiff, and Approval of Selection of Lead
4 Counsel, Docket No. 33.

5 * * *

6 The Defendants respectfully submit that the remaining topics normally covered in a Joint
7 Case Management Statement (*e.g.*, Settlement and ADR, Consent to Magistrate Judge
8 Assignment, and Scheduling) are premature at this time.

9
10 Dated: January 25, 2008

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

11
12 By: /s/ Rodney G. Strickland, Jr.
13 Rodney G. Strickland, Jr.

14 Keith E. Eggleton
15 Joni Ostler
16 650 Page Mill Road
17 Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
E-mail: jostler@wsgr.com

18 Attorneys for Defendants BigBand Networks, Inc.,
19 Amir Bassan-Eskenazi, Ran Oz, Frederick A. Ball,
20 Gal Israely, Dean Gilbert, Kenneth E. Goldman,
Lloyd Carney, Bruce I. Sachs, Robert J. Sachs, and
Geoffrey Y. Yang

21 Dated: January 25, 2008

ORRICK HERRINGTON & SUTCLIFFE LLP

22 By: /s/ Michael C. Tu
23 Michael C. Tu
24 777 South Figueroa Street
Suite 3200
25 Los Angeles, CA 90017-5855
26 Tel.: (213) 629-2020
27 Fax: (213) 612-2499
28 Email: mtu@orrick.com

1 Robert P. Varian
2 ORRICK HERRINGTON & SUTCLIFFE LLP
3 405 Howard Street
4 San Francisco, CA 94105-2669
5 Tel.: (415) 773-5934
6 Fax: (415) 773-5759
7 Email: rvarian@orrick.com

8
9 *Counsel for Defendants Morgan Stanley & Co.*
10 *Incorporated, Merrill Lynch, Pierce, Fenner &*
11 *Smith Incorporated, Jefferies & Company, Inc.,*
12 *Cowen and Company, LLC and ThinkEquity*
13 *Partners LLC*

14 **VERIFICATION**

15 I, Joni Ostler, am the ECF user whose identification and password are being used to file
16 the **DEFENDANTS' STATEMENT REGARDING CASE MANAGEMENT**
17 **CONFERENCE**. In compliance with General Order 45.X.B, I hereby attest that Rodney G.
18 Strickland, Jr. and Michael C. Tu have concurred in this filing.

19 Dated: January 25, 2008

20 WILSON SONSINI GOODRICH & ROSATI
21 Professional Corporation

22 By: /s/ Joni Ostler
23 Joni Ostler
24
25
26
27
28